Office - Supreme Court, U. S.
FILED
SEP 30 1943
CHARLES ELMORE CROPLEY
CLERK

(3)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

---

# No. 401

---

GERTRUDE KOLLER BROWN,

*Petitioner,*

*vs.*

THE SCHOOL DISTRICT OF THE CITY OF BETHLEHEM, PA.

---

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.**

---

E. G. Scoblionko,
*Counsel for Petitioner.*

Of Counsel:
David Getz.

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Petition for writ of certiorari | 1 |
| Summary and short statement of the matter involved | 1 |
| Statement as to jurisdiction | 4 |
| (a) Statutory provision sustaining jurisdiction | 4 |
| (b) Cases believed to sustain jurisdiction | 4 |
| (c) Dates of judgment and of application for certiorari | 4 |
| (d) Nature of the case, federal questions raised, substantial questions | 6 |
| Questions presented | 6 |
| Reasons relied on for the allowance of the writ | 6 |
| Brief in support of petition for writ of certiorari | 9 |
| Conclusion | 16 |


## Table of Cases Cited.


| | |
|---|---|
| *Buchalter* v. *New York*, 87 L. Ed. Adv. Op. 1088, 63 Sup. Ct. 1129 | 4 |
| *Columbia Water Power Co.* v. *Columbia Electric St. Ry. Light and Power Co.*, 172 U. S. 475 | 4,12 |
| *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23. | 4,15 |
| *Indiana* v. *Brand* 303 U. S. 95 | 4,15 |
| *Pierre* v. *State of Louisiana*, 306 U. S. 354 | 4,12 |
| *Skinner* v. *Oklahoma*, 316 U. S. 547 | 4,15 |
| *West Virginia State Board of Education* v. *Barnette*, 87 L. Ed. Adv. Op. 1171, 63 Sup. Ct. 1178 | 4,15 |
| *Yick Wo* v. *Hopkins*, 118 U. S. 356 | 4,13 |


## Statutes Cited.


| | |
|---|---|
| Judicial Code, Sec. 237(b) as amended, 43 Stat. 936, 28 U. S. C. 344(b) | 4 |
| Teachers' Tenure Act of 1937 (24 P. S. Section 1126) | 2 |
| Tenure Act of June 20, 1939, P. L. 482, Sec. 2 (24 P. S. 1126) | 9 |
| School Code of May 18, 1911 (P. L. 309, 24 P. S. 1162) | 9 |
| School Code of May 18, 1911, (24 P. S. 1128), Sec. 1209. | 10 |

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1943**

---

# No. 401

---

GERTRUDE KOLLER BROWN,
*vs.* *Petitioner,*

THE SCHOOL DISTRICT OF THE CITY OF BETHLEHEM, PA.

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

---

*To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Gertrude Koller Brown, respectfully prays that a Writ of Certiorari issue herein to review a certain final decision of the Supreme Court of the State of Pennsylvania, and in support thereof presents the following statements, questions, and reasons:

### I. Summary and Short Statement of the Matter Involved.

Gertrude Koller Brown, hereinafter called the petitioner, was engaged as a dental hygienist by the Bethlehem School

District for the school year 1932-33 and continued in that capacity until the end of the 1940-41 school year. On August 16, 1938, *after the petitioner was married,* she entered into a contract with the Bethlehem School District in the statutory form prescribed by the Teachers' Tenure Act of 1937 (24 P. S. Section 1126), providing for an annual compensation of Fifteen hundred ($1500.00) dollars (R. 17).

There was an established custom and usage of the Bethlehem School District whereby applications for sick leaves or maternity leaves were made to the Board of School Directors and granted (R. 43). In view of this fact and in the absence of any rules and/or regulations governing sick leaves and maternity leaves, your petitioner, by letter dated July 18, 1941 (R. 18), requested a sick leave. In response to a communication from the Bethlehem School District that she furnish a doctor's certificate, your petitioner transmitted a certificate from Dr. T. E. Schadt to the effect that "Mrs. Brown is pregnant and will be delivered in December" (R. 21-22).

On August 30, 1941, petitioner was notified that her request for a sick leave was denied (R. 24). After being requested to resign, petitioner's counsel, by letter dated September 25, 1941 (R. 26), advised the Bethlehem School District that the petitioner would not resign and that she desired to resume her professional duties.

Thereafter, at a regular meeting of the directors of the Bethlehem School District, held on October 31, 1941, a resolution was adopted preferring the following charges against the petitioner (R. 30):

> "1. That since September 3, 1941, Gertrude Koller Brown has been and continues to be incompetent to perform her duties as dental hygienist of this District.
>
> 2. That from September 3, 1941, thence hitherto, Gertrude Koller Brown has persistently neglected to perform said duties.

3. That from September 3, 1941, thence hitherto, Gertrude Koller Brown has persistently and wilfully violated the School Laws of this Commonwealth."

A hearing was held before the Board of Directors of the Bethlehem School District on November 17, 1941, at which time counsel for the respective parties stipulated that the charges preferred against the petitioner did not question the petitioner's educational competency, but that her incompetency arose because of her temporary physical disability resulting from pregnancy (R. 38). Petitioner was discharged and so notified by registered mail (R. 49-51).

In accordance with the statutory procedure provided in the Teachers' Tenure Act, *supra*, petitioner appealed to the Superintendent of Public Instruction at Harrisburg, Pennsylvania (R. 40), who, after hearing the matter, reversed the decision of the Bethlehem School District and directed the petitioner's reinstatement (R. 6-12).

The Bethlehem School District appealed to the Court of Common Pleas of Northampton County, Pennsylvania, where the matter was submitted upon the record and testimony taken at the original hearing. After oral argument, the Court of Common Pleas affirmed the decision and order of the Superintendent of Public Instruction.

The Bethlehem School District then appealed to the Superior Court of the Commonwealth of Pennsylvania and said Court reversed the order of the Court of Common Pleas of Northampton County, to which order, however, Rhodes, J. dissented (R. 73).

The Supreme Court of Pennsylvania, the State court of last resort, allowed an appeal upon petitioner's application (R. 80). Thereafter, the judgment of the Superior Court was affirmed per curiam (R. 81).

Petitioner then presented a petition for reargument alleging specifically the Federal questions involved, which petition was refused on June 30, 1943, without an opinion.

## II. Statement as to Jurisdiction.

(a) *Statutory Provision Sustaining Jurisdiction.*

The jurisdiction of the United States Court in this case is predicated on Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 936, 28 U. S. C. A. 344 (b).

(b) The following cases sustain the jurisdiction of this Court:

*Columbia Water Power Co.* v. *Columbia Electric Street Railway, Light & Power Co.*, 172 U. S. 475.
*Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23.
*Yick Wo* v. *Hopkins*, 118 U. S. 356.
*Indiana* v. *Brand*, 303 U. S. 95.
*Pierre* v. *State of Louisiana*, 306 U. S. 354.
*Skinner* v. *Oklahoma*, 316 U. S. 547.
*West Virginia State Board of Education* v. *Barnette, et al.*, 87 L. Ed. Adv. Ops. 1171, 63 Sup. Ct. Rep. 1178.
*Buchalter* v. *New York; Weiss* v. *New York; Capone* v. *New York*, 87 L. Ed. Adv. Op. 1088, 63 Sup. Ct. Rep. 1129.

(c) *Dates of Judgment and Application for Certiorari.*

The Judgment of the Supreme Court of Pennsylvania (R. 81) affirming the order of the Superior Court of Pennsylvania (R. 73) was rendered on May 26, 1943. A petition for reargument (R. 81) was filed on June 3, 1943 and denied in a per curiam order, on June 30, 1943. This application is presented on the 30th day of Sept., 1943.

(d) *Nature of the Case, Federal Question Raised, Substantial Questions.*

This proceeding was originally instituted by the Board of Directors of the School District of the City of Bethlehem

to dismiss the petitioner as a professional employee from said district after her request for a sick or maternity leave had been refused. The petitioner appealed to the Superintendent of Public Instruction under the provisions of the Teachers' Tenure Act, *supra.*

The Federal question sought to be reviewed was first presented in the petition addressed to the Superintendent of Public Instruction for a hearing pursuant to the provisions of the Teachers' Tenure Act, *supra,* wherein it was alleged, first—that the action of the Bethlehem School District was unjust, inequitable and discriminatory in that the said Bethlehem School District had accorded sick leaves under similar circumstances, and further that the action against your petitioner was one of a series of acts undertaken to intimidate, demoralize and coerce all married female employees into resigning (R. 43). This discrimination was particularly raised and its contravention to the fourteenth amendment was stated in the written brief and oral argument before the Superintendent of Public Instruction and in the Court of Common Pleas of Northampton County, Pennsylvania. The petitioner's position was sustained without specific reference to the Federal question.

In the Superior Court and in the Supreme Court, your petitioner maintained that the action of the Bethlehem School District was discriminatory and, in effect, an attack upon the institution of marriage. It was maintained that "any rule or regulation prohibiting a female professional employee, who is legitimately pregnant, from taking a sick leave in the event of pregnancy upon penalty of dismissal, was arbitrary, unreasonable, contrary to public morals, offensive to some religious concepts, and in effect, a restraint upon the exercise of free and wholesome marital relationship."

The Superior Court expressly found that your petitioner was not being discriminated against (R. 77). In the peti-

tion for reargument before the Supreme Court of Pennsylvania, the Federal question was again raised (R. 81-82). This petition was denied.

This case raises a substantial question of Federal law not heretofore considered by the United States Supreme Court—whether or not a board of education has the authority, in the absence of any rules and regulations governing sick and maternity leaves, and in view of a long established custom whereby professional employees under its jurisdiction have been granted such leaves, to arbitrarily single out a married female professional employee and dismiss her because of her temporary physical disability resulting from pregnancy.

## III. The Questions Presented.

(a) Has a board of school directors denied a married professional employee the equal protection of the laws as secured by the fourteenth amendment to the United States Constitution, who is dismissd for incompetency solely on the ground of temporary physical disability resulting from pregnancy, in the absence of any rule or regulation of the board governing maternity or sick leaves, and contrary to established custom and practice whereby leaves of absence were granted for illness, accident or other temporary physical disability to other professional employees?

(b) If a board of school directors *engages married female professional employees*, under the provisions of a "tenure" act, is it contrary to the fourteenth amendment of the United States Constitution, and public policy, to dismiss said employees if they become temporarily disabled solely by reason of pregnancy?

## IV. Reasons Relied On for the Allowance of the Writ.

(a) None of the foregoing questions have been answered by this Court and the State courts have not adequately

disposed of these questions. The Supreme Court of Pennsylvania, while affirming the order of the Superior Court of Pennsylvania (R. 73), which failed to conclude that petitioner was being discriminated against because of her legitimate pregnancy, nevertheless observed that "school boards should adopt reasonable rules" to avoid difficulties similar to the case at bar (R. 81). This observation, however, does no answer petitioner's contention of discrimination in the absence of such reasonable rules. Furthermore, it sanctions arbitrary and capricious action on the part of school boards and, in effect, rewards school boards who neglect to adopt reasonable rules by authorizing them to act according to their whims and fancies without uniformity.

(b) The questions presented are serious and vital to the entire body of professional employees in the various school districts of Pennsylvania. In the Supreme Court of the State of Pennsylvania, the Pennsylvania State Education Association, representing fifty-seven thousand (57,000) professional employees, intervened as an interested party (R. 83), filed a brief and submitted oral argument. In addition, this group submitted a petition for joinder in the reargument alleging the Federal question involved.

(c) The questions presented are especially serious and vital in war time when married women are called upon to replace men in the industrial and professional fields. The problem resolves itself into the determination of whether or not married women, otherwise secure in their employment, must forego motherhood as a condition precedent for continued employment.

Petitioner presents herewith her brief in support of the petition.

Wherefore your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Penn-

sylvania, requiring that Court to certify the whole record of the case herein to this Court for review and determination.

GERTRUDE KOLLER BROWN,
*Petitioner,*

By E. G. SCOBLIONKO,
*Counsel.*

DAVID GETZ,
*Of Counsel.*